

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

DEANDRA MARIE SPIESS,

Plaintiff,

v.

No. CIV-14-0486 LAM

CAROLYN W. COLVIN, Acting Commissioner  
of the Social Security Administration,

Defendant.


**ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES**  
**UNDER THE EQUAL ACCESS TO JUSTICE ACT**

**THIS MATTER** is before the Court on Plaintiff's *Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, With Memorandum in Support* (Doc. 26) in the amount of \$6,114.88 for attorney fees, filed on October 22, 2015. Defendant has not responded to the motion, nor requested an extension of time, and the time for responding has passed. "The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M. LR-Civ. 7.1(b). Having considered the motion, the record in this case, and relevant law, the Court **FINDS** that Plaintiff's motion is well-taken and shall be **GRANTED**.

**WHEREFORE, IT IS HEREBY ORDERED** that Plaintiff's *Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, With Memorandum in Support* (Doc. 35) is **GRANTED**, and Plaintiff is authorized to receive **\$6,114.88** for payment to Plaintiff's attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

**IT IS FURTHER ORDERED** that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's attorney shall refund the smaller award to Plaintiff pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 n.4 (2010) (explaining that, if a claimant's counsel is ultimately granted attorney fees under § 406(b) out of the claimant's benefit award, the claimant's attorney must refund to the claimant the amount of the smaller fee).

**IT IS SO ORDERED.**

  
**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**  
**Presiding by Consent**